IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5550 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

S V THAKOR

Versus

STATE OF GUJARAT

Appearance:

MR BIPIN I MEHTA for Petitioner

Ms.Harsha Devani, learned A.G.P.

for respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 11/07/2000

ORAL JUDGEMENT

1. This petition was filed in the Court on 16.8.91 with the prayer for quashing and setting aside the order dated 31.7.91 Annexure 'E' and the order dated 13.8.91 Annexure 'F' and that the respondents be restrained from reverting the petitioner from the post of Deputy

Mamlatdar to the post Supernumerary Deputy Mamlatdar.

2. Petitioner's case is that he joined the services of the erstwhile State of Bombay as a Clerk in the Revenue Department on 15.1.60 with posting at Collectorate, Banaskantha District at Palanpur. On formation of the State of Gujarat, the petitioner was allocated to the State of Gujarat and he continued to work in the said office. He passed Sub Service Departmental Examination in the year 1964. He was confirmed in the cadre of Clerk and was promoted to the post of Aval Karkun/Deputy Mamlatdar on 3.7.73. He had also passed Lower Revenue Qualifying Examination in the year 1984 and the Higher Revenue Qualifying Examination in the year 1990. The petitioner goes on to state that in the year 1980 he had filed Special Civil Application No.2918/80 challenging the vires of Rule 8 of Revenue Qualifying Examination Rules, 1970 and also challenging the action of the respondents to revert the petitioner from the post of Deputy Mamlatdar to the post of Clerk. That petition was admitted and an order of status quo was granted on 21.10.80. As per the averments made in para 4 of the petition that Special Civil Application No.2918/80 was still pending at the time when the present petition was filed in the year 1991. It is the case of the petitioner that the petitioner was continuing on the post of Deputy Mamlatdar till 15.11.90. While the petitioner was holding the post of Deputy Mamlatdar since 1973, the petitioner claims that while discharging the duties as Deputy Mamlatdar he never received any Memo, no inquiry was held against him and his service record was clean and blotless. On 15.11.90 the Collector, Banaskantha passed an order whereby appointments/transfers of certain Deputy Mamlatdars were made. By this order, one Shri Y.A.Qureshi, Supernumerary Deputy Mamlatdar was appointed on the post of Deputy Mamlatdar and that said Shri Qureshi was shown to have been appointed in place of the petitioner. Petitioner's grievance is that thus he was made Supernumerary Deputy Mamlatdar instead of Deputy Mamlatdar. While making reference to yet another order dated 15.11.90 in para 7 it has been stated that at Sr.No.13 the petitioner was posted as Supernumerary Deputy Mamlatdar at Palanpur in place of D.K.Dabhi, who was a Clerk and thus the petitioner was asked to work on the post of Supernumerary Deputy Mamlatdar in place of a Clerk. Copies of these two orders dated 15.11.90 have been annexed with the petition as Annexures 'B' and "C' respectively. The petitioner requested the Collector, Banaskantha that he may be appointed on the post of Deputy Mamlatdar. The District Collector, Banaskantha then passed an order on 10.4.91 appointing some persons

on the post of Deputy Mamlatdar and this order at Sr.No.1 says that the petitioner, Supernumerary Deputy Mamlatdar, is appointed on the post of Deputy Mamlatdar at Vadgam. The Collector, Banaskantha then passed an order on 31.7.91 transferring/appointing certain Deputy Mamlatdars and as per this order, the election of year 1991 were over and Deputy Mamlatdars were required to be appointed as Supernumerary Deputy Mamlatdars and thereby petitioner was appointed on the post of Supernumerary Deputy Mamlatdar in place of C.V.Prajapati, who was a Clerk. The Collector, Banaskantha then passed an order on 13.8.91 transferring the petitioner in place of R.A. Thakar in the Colectorate at Palanpur. Thereafter a seniority list of Deputy Mamlatdars was published on 9.2.91 wherein his name was shown at Sr.No.150. The petitioner then represented that he had passed both the Examinations as per the prevailing Rules and he was required to be placed below Sr.No.12 and above Sr.No.13 in the seniority list and that all the Deputy Mamlatdars from Sr.No.13 and onwards in the seniority list were junior to the petitioner. However, no decision on this representation dated 7.3.91 was conveyed. The sum and substance of the matter is that through this Petition the petitioner has made a grievance against the orders dated 31.7.91 Annexure 'E' and 13.8.91 Annexure 'F' and the effect of these orders, as can be spelt out, is that the petitioner is being treated as Supernumerary Deputy Mamlatdar instead of Deputy Mamlatdar and the petitioner has raised the grievance that thereby his services are utilised as a Clerk.

3. The learned counsel for the petitioner is not in a position to make any categorical statement as to whether the petitioner is still continuing in service or not. But the learned counsel for the petitioner submits that the petitioner was appointed in the year 1960 and by this time he may have retired on attaining the age of superannuation, because even if he is taken to be of 18 years at the time when he joined in 1960, by this time he might have attained the age of about 58 years. Learned counsel for the petitioner submits that either the petitioner has retired or he is about to retire and that he has remained protected on the basis of the interim order passed by this Court. Learned counsel for the petitioner has also made reference to Annexure 'I' wherein it has been stated that one Shri B.L.Charan, Supernumerary Deputy Mamlatdar was promoted as Deputy Mamlatdar and, therefore, Deputy Mamlatdar is a post higher than that of Supernumerary Deputy Mamlatdar.

4. Be that as it may, the fact of the matter is that

supernumerary is a suffix to the post denoting its creation beyond sanctioned strength and not a designation. Nomenclature in such cases or a reference in the order such as Annexure 'I' that a supernumerary Dy. Mamlatdar is promoted as Dy. Mamlatdar is not at all indicative of the fact that Deputy Mamlatdar is a post higher than that of Supernumerary Deputy Mamlatdar. Supernumerary posts are created, in case there is any order by the Court for giving benefit to a litigating party, when no sanctioned posts are available. To meet this type of exigency or for other like reasons, supernumerary posts are created; but that does not mean that a person, who is appointed against a supernumerary post of the same rank suffers a reduction in rank. Merely because a person is given posting against a post, which is created as a supernumerary post, that does not mean an order of reversion or an order of penalty. It is not the case of the petitioner that his pay was reduced and it is also not in dispute that the petitioner suffered no loss or reduction of rank. Merely because his services were utilised as a Clerk while giving him posting as Deputy Mamlatdar against the Supernumerary post, it cannot be said that he stood reduced in rank or suffered any reversion, more particularly when there is no reduction in the pay. Neither there is any pecuniary loss nor any loss of substantive rank in any manner. The grievance thus sought to be voiced through this petition appears to be wholly illusory with no legal consequences. The petitioner has not been denied any of his earned benefit. In this view of the matter and in the facts and circumstances of this case, as have been narrated hereinabove, I do not find that any interference is warranted with any of the impugned orders dated 31.7.91 Annexure 'E' and dated 13.8.91 Annexure 'F'. I do not find any force in this Special Civil Application. The same is hereby dismissed. Rule is hereby discharged. Interim order automatically comes to an end. No order as to costs.

(M.R.Calla,J)